



7710-12

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment

AGENCY: Postal Service.

ACTION: Interim final rule.

SUMMARY: This rule updates postal regulations to implement the annual inflation adjustments to civil monetary penalties that may be imposed under consumer protection and mailability provisions enforced by the Postal Service pursuant to the Deceptive Mail Prevention and Enforcement Act and the Postal Accountability and Enhancement Act. These adjustments are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This notice also includes the statutory civil monetary penalties subject to the 2015 Act.

DATES: *Effective date:* January 19, 2017.

FOR FURTHER INFORMATION CONTACT: Steven Sultan, (202) 268-7385.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Pub. L. 114-74, 129 Stat. 584, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Section 3 of the 1990 Act specifically includes the Postal Service in the definition of “agency” subject to its provisions.

Beginning in 2017, the 2015 Act requires the Postal Service to make an annual adjustment for inflation to civil penalties that meet the definition of “civil monetary penalty” under the 1990 Act. The Postal Service must make the annual adjustment for inflation and publish the adjustment in the Federal Register by January 15. Each penalty will be adjusted as instructed by the Office of Management and Budget (OMB) based on the Consumer Price Index (CPI-U) from the most recent October. OMB has furnished detailed instructions regarding the annual adjustment for 2017 in memorandum M-17-11, *Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf. This year, OMB has advised that an adjustment multiplier of 1.01636 will be used. The new penalty amount must be rounded to the nearest dollar.

The 2015 Act allows the interim final rule and annual inflation adjustments to be published without prior public notice or opportunity for public comment.

Adjustments to Postal Service Civil Monetary Penalties

Civil monetary penalties may be assessed for postal offenses under sections 106 and 108 of the Deceptive Mail Prevention and Enforcement Act, Pub. L. 106-168, 113 Stat. 1811, 1814 (see, 39 U.S.C. 3012(a), (c)(1), (d), and 3017 (g)(2), (h)(1)(A)); and section 1008 of the Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3259-3261 (see, 39 U.S.C. 3018 (c)(1)(A)). The statutory civil monetary penalties subject to the 2015 Act and the amount of each penalty the annual adjustment for inflation are as follows:

39 U.S.C. 3012(a) – False representations and lottery orders.

Under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C. 3012(a). This section currently imposes a \$68,345 penalty for each mailing less than 50,000 pieces, \$136,689 for each mailing of 50,000 to 100,000 pieces, and \$13,669 for each additional 10,000 pieces above 100,000 not to exceed \$2,733,780. The new penalties will be as follows: \$69,463 for each mailing less than 50,000 pieces, \$138,925 for each mailing of 50,000 to 100,000 pieces, and \$13,893 for each additional 10,000 pieces above 100,000 not to exceed \$2,778,505.

39 U.S.C. 3012(c)(1) – False representation and lottery penalties in lieu of or as part of an order.

In lieu of or as part of an order issued under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may assess a civil penalty. Currently, the amount of this penalty, set in 39 U.S.C. 3012(c)(1), is \$34,172 for each mailing that is less than 50,000 pieces, \$68,345 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,834 for each additional 10,000 pieces above 100,000 not to exceed \$1,366,890. The new penalties will be: \$34,731 for each mailing that is less than 50,000 pieces, \$69,463 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,946 for each additional 10,000 pieces above 100,000 not to exceed \$1,389,252.

39 U.S.C. 3012(d) – Misleading references to the United States Government; Sweepstakes and deceptive mailings.

Persons sending certain deceptive mail matter described in 39 U.S.C. 3001((h)-(k), including:

- Solicitations making false claims of Federal Government connection or approval;
- Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;
- Solicitations containing improperly prepared “facsimile checks”; and
- Certain solicitations for “skill contests” and “sweepstakes” sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them);

may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d).

Currently, this penalty is not to exceed \$13,669 for each mailing. The new penalty will be \$13,893.

39 U.S.C. 3017(g)(2) – Commercial use of lists of persons electing not to receive skill contest or sweepstakes mailings.

Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. Currently, this civil penalty may not exceed \$2,733,780 per violation. The new penalty may not exceed \$2,778,505 per violation.

39 U.S.C. 3017(h)(1)(A) – Reckless mailing of skill contest or sweepstakes matter.

Currently, under 39 U.S.C. 3017(h)(1)(A), any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States in

the amount of \$13,669 per violation for each mailing to an individual. The new penalty is \$13,893 per violation.

39 U.S.C. 3018(c)(1)(A) – Hazardous material.

Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous materials or fails to follow postal laws on mailing hazardous materials. Currently, this civil penalty is at least \$295, but not more than \$117,858 for each violation. The new penalty is at least \$300, but not more than \$119,786 for each violation.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Banks, Banking, Credit, Crime, Infants and children, Law enforcement, Penalties, Privacy, Seizures and forfeitures.

For the reasons set out in this document, the Postal Service amends 39 CFR part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for 39 CFR part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005, 3012, 3017, 3018; 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101-410, 104 Stat. 890; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub.L. 104–208, 110 Stat. 3009-378); Pub. L. 106-168, 113 Stat. 1806; Pub. L. 114-74, 129 Stat. 584.

2. In § 233.12(a), remove “\$68,345” and add in its place “\$69,463”; remove “\$136,689” and add in its place “\$138,925”; remove “\$13,669” and add in its place

“\$13,893”; remove “each piece above 100,000” and add in its place “each additional 10,000 pieces above 100,000”; remove “\$2,733,780” and add in its place “\$2,778,505”.

3. In § 233.12(b), remove “\$34,172” and add in its place “\$34,731”; remove “\$68,345” and add in its place “\$69,463”; remove “\$6,834” and add in its place “\$6,946”; remove “every” and add in its place “each”; remove “\$1,366,890” and add in its place “\$1,389,252”.

4. In § 233.12(c)(4), remove “\$13,669” and add in its place “13,893”.

5. In § 233.12(d), remove “\$2,733,780” and add in its place “\$2,778,505”.

6. In § 233.12(e), remove “\$13,669” and add in its place “\$13,893”.

7. In § 233.12(f), remove “\$295” and add in its place “\$300”; remove “\$117,858” and add in its place “\$119,786”.

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